

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,  
WESTERN DIVISION

RONNIE WALLS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:06cv188-DCB-MTP

CLIFTON KAHOE, et al.

DEFENDANTS

**ORDER**

This matter comes before the Court on the plaintiff's Appeal of Magistrate Order [**docket entry no. 47**]. The plaintiff objects to the Magistrate Judge's Text Order of January 7, 2008, in which the plaintiff's Renewed Motion to Appoint Counsel [docket entry no. 44]<sup>1</sup> was denied. The plaintiff asserts that because the Magistrate Judge failed to make specific findings as to the exceptional circumstances factors enumerated in Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982), the Text Order was clearly erroneous and contrary to law.

Title 28 U.S.C. § 636(b)(1)(A) provides that the district judge, having assigned certain pretrial matters to the magistrate, "may reconsider any pretrial matter . . . where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." Similarly, Federal Rule of Civil Procedure 72(a) instructs that within ten days of a magistrate's order on a non-dispositive pretrial matter "a party may serve and file objections

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<sup>1</sup> The plaintiff's initial Motion to Appoint Counsel [docket entry no. 3] was denied by Order [docket entry no. 12] of the Magistrate Judge on April 5, 2007.

to the order[.]” Once the party objects, “[t]he district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge’s order found to be clearly erroneous or contrary to law.” FED. R. CIV. P. 72(a).

The appointment of counsel for a civil litigant “is a privilege and not a constitutional right.” Lopez v. Reyes, 692 F.2d 15, 17 (5th Cir. 1982). Moreover, “[i]n a civil case, an attorney should be appointed only under exceptional circumstances.” Williams v. Ballard, 466 F.3d 330, 335 (5th Cir. 2006). The factors to be considered in determining whether such exceptional circumstances exist are as follows: 1) the type and complexity of the case; 2) the litigant’s ability to investigate and present the case; and 3) the level of skill needed to present the evidence. Castro Romero v. Becken, 256 F.3d 349, 354 (5th Cir. 2001).

In the January 7, 2008 Text Order, the Magistrate Judge found that “[n]o exceptional circumstances exist to justify” granting the plaintiff’s Renewed Motion to Appoint Counsel. While it is ordinarily true that a Court “should make specific findings on each of the Ulmer factors rather than deciding the motion in a conclusory manner[.]” Jackson v. Dallas Police Dep’t, 811 F.2d 260, 262 (5th Cir. 1986), this Court, upon a thorough review of the entire record and docket, is convinced that the Magistrate Judge did not err in denying the plaintiff’s Renewed Motion to Appoint

Counsel. The Court does not deem this case exceedingly complex, inasmuch as this a § 1983 action brought by the plaintiff for damages he allegedly incurred in seeking medical care after an accident. The Court also finds that the plaintiff has adequate ability to investigate and present his case, as evidenced by the unusually well-fashioned and supported filings the plaintiff has already made in this cause, including the instant matter before the Court. Lastly, the Court does not find at this time that an extraordinary degree of skill will be required in order for the plaintiff to present evidence in this case. Accordingly, the Court agrees with the Magistrate Judge that exceptional circumstances are not present and the appointment of counsel for the plaintiff is unwarranted. Accordingly,

**IT IS HEREBY ORDERED** that the plaintiff's Appeal of Magistrate Order [**docket entry no. 47**] is **DENIED**.

**SO ORDERED**, this the 15<sup>th</sup> day of April 2008.

s/ David Bramlette  
**UNITED STATES DISTRICT JUDGE**